

December 1, 2004

Via ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: *Notice of ex parte presentation - CC Docket No. 01-92*

Dear Ms. Dortch:

On Tuesday, November 30, 2004, Charon Phillips, Regulatory Counsel, Verizon Wireless, and the undersigned, on behalf of Verizon Wireless, met with Christopher Libertelli, Senior Legal Advisor to Chairman Powell, and Aaron Goldberger, to discuss two pending petitions for declaratory ruling in the above-referenced docket: (1) Sprint's petition regarding CMRS carriers' rights to designate different rating and routing points for their numbering resources;¹ and (2) T-Mobile's petition regarding the impropriety of "CMRS termination tariffs" filed by rural incumbent local exchange carriers ("ILECs").²

With respect to the Sprint petition, Verizon Wireless observed, as it has in previous filings in this docket, that current law allows CMRS carriers to designate different rating and routing points, and that CMRS carriers and rural ILECs each bear the responsibility for transport and termination costs for traffic that their customers originate to the other carrier's designated routing point, provided that it is in the same MTA as the rating point.³

With respect to the T-Mobile petition, Verizon Wireless acknowledged the Commission's desire to balance CMRS carriers' and rural ILECs' incentives to negotiate fair compensation terms for the traffic that they exchange. Verizon Wireless argued, however, that permitting CMRS termination tariffs is a poor vehicle for achieving this goal. First, Verizon Wireless

¹ See *Comment Sought on Sprint Petition for Declaratory Ruling Regarding the Routing and Rating of Traffic by ILECs*, Public Notice, CC Docket No. 01-92, 17 FCC Rcd 13859 (2002).

² See *Comment Sought on Petitions for Declaratory Ruling Regarding Intercarrier Compensation for Wireless Traffic*, Public Notice, CC Docket No. 01-92, 17 FCC Rcd 19046 (2002).

³ See *TSR Wireless v. U S West Communications*, Memorandum Opinion and Order, 15 FCC Rcd 11166, 11184, *aff'd*, *Qwest Corp. v FCC*, 252 F.3d 462 (D.C. Cir. 2001).

Marlene H. Dortch, Secretary

December 1, 2004

Page 2

reiterated that several federal courts have found that tariffs may not be used to replace the statutory right of carriers to negotiate and, if necessary, arbitrate local interconnection relationships.⁴ Verizon Wireless does not believe that there is any colorable argument that these cases can be distinguished from the circumstances of this case. Moreover, efforts to avoid this case law would create potentially dangerous precedent undermining the bedrock statutory principle of negotiation as the fundamental means of ordering local interconnection relationships.

The proposal to permit CMRS termination tariffs but to allow CMRS carriers to override their effectiveness with a request for negotiation pursuant to 47 C.F.R. § 51.715 or 47 C.F.R. § 51.717 is equally problematic. As Verizon Wireless has noted before, Sections 51.715 is of questionable use for this purpose because it is uncertain whether a CMRS termination tariff would qualify as an “existing interconnection arrangement that provides for the transport and termination of telecommunications traffic by the incumbent LEC.”⁵ In addition, there is a question whether the rule applies to rural telephone companies, or whether “2% carriers” could seek exemption from the rule, pursuant to section 251(f).⁶ Section 51.717 permits CMRS carriers to renegotiate non-reciprocal arrangements entered prior to August 8, 1996, and it does not appear that the Commission has adequate notice to eliminate the date restriction in that rule section. Like Section 51.715, it is unclear whether Section 51.717 would apply to rural telephone companies,⁷ and it is uncertain that tariffs are “arrangements” to which Section 51.717(a) applies.

In addition to being legally unsound, CMRS termination tariffs would be a poor means of achieving the Commission’s goals because none of the current proposals would effectively protect CMRS carriers from rural ILEC abuse. Because of the outstanding issues in the Sprint petition, referenced above, many CMRS carriers have been unable to obtain local numbers in rural ILECs’ rate centers. As a result, most calls from rural ILEC customers to CMRS numbers are “toll” calls carried by IXCs. This traffic is subject to access charges, not reciprocal compensation. The application of section 51.717(a), as modified, might make the tariffed rate reciprocal, but it would create no offsetting liability on the part of the rural ILECs because much or all of their land-to-mobile traffic is carried by IXCs. CMRS carriers would be obligated to pay the exorbitant and non-cost-based rates specified in the termination tariffs, or alternatively arbitrate with potentially thousands of ILECs, and may be subject to other unilateral and arbitrary obligations in the tariffs.

Instead of engaging in a legally dubious effort to uphold CMRS termination tariffs, the Commission can overcome the ILECs’ perceived lack of ability to force CMRS carriers into arbitration by clarifying that Sections 201 and 332 of the Act and Section 20.11 of the Commission’s rules require wireless carriers to negotiate in good faith with requesting ILECs.⁸

⁴ See Verizon Wireless ex parte letter, CC Docket No. 01-92 (filed July 7, 2004), attachment at 3-4.

⁵ 47 C.F.R. § 51.715(a)(1).

⁶ See *First Local Competition Order*, 11 FCC Rcd 15499, 16031 ¶ 1068 (1996).

⁷ 47 U.S.C. § 251(f).

⁸ See, e.g., 47 C.F.R. § 20.11(c) (“Local exchange carriers and commercial mobile radio service

WILKINSON) BARKER) KNAUER) LLP

Marlene H. Dortch, Secretary

December 1, 2004

Page 3

Unlike upholding rural ILEC termination tariffs, this approach would effectively balance CMRS carriers' and rural ILECs' incentives to negotiate fair compensation terms for the traffic that they exchange. It also would respect circuit court precedent regarding the statute's prescription of negotiation, and if necessary arbitration, as the sole means of establishing local interconnection arrangements.

Consistent with the Commission's ex parte rules, this letter is being filed electronically in the above-referenced docket.

Sincerely,

WILKINSON BARKER KNAUER, LLP

By: /s/
L. Charles Keller

cc (by email): Christopher Libertelli
Aaron Goldberger